

The Honorable Richard A. Jones
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L., L.M.M.M., B.M.,
G.K., L.K.G., and D.W.,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Janet NAPOLITANO,
Secretary, Department of Homeland Security;
Alejandro MAYORKAS, Director, U.S. Citizenship
and Immigration Services; Eric H. HOLDER, Jr.,
Attorney General of the United States; Juan OSUNA,
Director, Executive Office for Immigration Review,

Defendants.

Case No. 2:11-cv-02108 RAJ

~~PROPOSED~~ ORDER GRANTING
JOINT MOTION FOR CLASS
CERTIFICATION

~~PROPOSED~~ ORDER GRANTING CLASS
CERTIFICATION - 1 of 4
2:11-cv-02108 RAJ

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1 Upon consideration of Parties' Join Motion for Class Certification, Settlement Agreement,
 2 and previously filed documents in support of the Motion for Class Certification (Dkt. No. 13, Exh.
 3 16-23), and pursuant to Rules 23(a) and 23(b)(2) and 23(g) of the Federal Rules of Civil Procedure,
 4 the Court certifies the following class and subclasses, and appoints the following as class counsel:
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6 **Notice and Review Class:** All noncitizens in the United States who meet all of the following
 7 criteria: (1) have filed or will file or lodge with Defendants a complete asylum application;
 8 (2) whose asylum applications have neither been approved nor subjected to a denial for
 9 which no rights of review or appeal remain; (3) whose applications for employment
 10 authorization based on their status as asylum applicants have been or will be denied; (4)
 11 whose eligibility for employment authorization based on a pending asylum application will
 12 be determined in a manner that is alleged to provide insufficient notice and/or opportunity for
 13 review; and (5) who fall in one or more of the following subclasses:
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15 1) **Hearing Subclass:** Individuals who meet all of the following criteria: (1) who have
 16 been or will be issued a Form I-862, Notice to Appear, in removal proceedings or
 17 Form I-863, Notice of Referral, to an immigration judge; 2) who have filed or lodged,
 18 or sought to lodge, or who will lodge or seek to lodge a complete defensive asylum
 19 application with the immigration court prior to a hearing before an immigration
 20 judge; and (3) whose eligibility for employment authorization has been or will be
 21 calculated from the date the asylum application was or will be filed at a hearing
 22 before an immigration judge.
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24 2) **Prolonged Tolling Subclass:** Asylum applicants who meet all of the following
 25 criteria: (1) non-detained asylum applicants whose time creditable toward
 26 employment authorization is or will be stopped due to delay attributed to them by
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Defendants; (2) who have allegedly resolved the issue causing the delay or will allegedly resolve the issue causing the delay prior to the next scheduled hearing; (3) but whose time creditable toward employment authorization remains or will remain stopped until the next hearing date.

- 3) **Missed Asylum Interview Subclass:** Asylum applicants who meet all of the following criteria: (1) who have failed or will fail to appear for an asylum interview with USCIS; and (2) who have not or will not accrue time creditable toward eligibility for employment authorization following the date of the missed asylum interview on account of missing that asylum interview.
- 4) **Remand Subclass:** Asylum applicants who meet all of the following criteria: (1) whose asylum applications were or will be denied by the immigration court before they have been pending at least 180 days exclusive of applicant caused delays; and (2) who subsequent to an appeal in which either the BIA or a federal court of appeals remands their case for further adjudication of their asylum claim by an immigration judge, have not or will not accrue additional time creditable toward eligibility for employment authorization.

Class counsel:

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16 Dated this 17th day of April, 2013.

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19 The Honorable Richard A. Jones
20 United States District Judge
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